

III.D. Debt Collectors Seeking Payment for Accounts Opened or Misused by an Identity Thief

Consumers often first learn they are the victim of identity theft when they are contacted by debt collectors about bills the consumers know nothing about. The Fair Debt Collection Practices Act (FDCPA) provides rights that could be valuable to victims of identity theft who face problems with debt collectors. 15 U.S.C. § 1692 *et seq.* Some additional rights are provided by the Fair Credit Reporting Act (FCRA). 15 U.S.C. § 1681 *et seq.*

Within five days after a debt collector first contacts the consumer, such as through a phone call, the collector must send the consumer a written notice stating the amount of money owed; the name of the creditor to whom money is owed; and what action to take if the consumer believes money is not owed. FDCPA § 809(a), 15 U.S.C. § 1692g(a). If the consumer, who, like your client, may be an identity theft victim, sends a letter disputing all or part of the debt within 30 days after she receives the written notice, the collector must stop trying to collect the debt. However, the collector is permitted to renew collection activities if it sends the victim verification of the debt, such as a copy of a bill for the amount owed. FDCPA § 809(b), 15 U.S.C. § 1692g(b).

Identity theft victims can permanently stop a debt collector from further contacts by sending a letter telling them to stop. FDCPA § 805(c), 15 U.S.C. § 1692c(c). Other than to comply with section 615(g)(2) of the FCRA, described below, once the collector receives the victim's letter, it may not contact the victim again except to say there will be no further contact or to notify the victim that the debt collector or the creditor intends to take some specific action. FDCPA § 805(c), 15 U.S.C. § 1692c(c). Note, however, that sending such a letter to a collector does not eliminate the debt; that is, it will not prevent the debt collector or creditor from taking other actions to collect the debt, including suing to collect the debt, unless the victim has also invoked his rights under the FCRA, as described below. Such a letter also does not prevent subsequent debt collectors whom the creditor may hire from contacting the victim.

To prevent the debt collector from selling or transferring the debt, or placing it for collection, the victim must notify the credit reporting agencies (CRAs) about the fraudulent debt, using the credit report blocking provisions of section 605B of the FCRA discussed in [Section III.A](#) of this guide. Upon accepting the victim's Identity Theft Report, a CRA must promptly notify the debt collector that furnished the information that the disputed debt may be the result of identity theft and that an Identity Theft Report has been filed. FCRA § 605B(b), 15 U.S.C. § 1681c-2(b). Debt collectors who have received such a notification from a CRA may not sell or transfer the debt or place it for collection, FCRA § 615(f)(1), 15 U.S.C. § 1681m(f)(1), and may not continue to report that information to a CRA, FCRA § 623(a)(6)(A), 15 U.S.C. § 1681s-2(a)(6)(A).

Further, under section 615(g)(2) of the FCRA, when the victim or a CRA notifies the debt collector of the identity theft, the debt collector must notify the initial creditor that the debt

may be fraudulent, and, upon the request of the victim, provide the victim with information about the underlying suspect transaction, as she otherwise would be entitled under FDCPA § 809(b), 15 U.S.C. §1692g(b). Examples of the kinds of information debt collectors might provide include the name of the original creditor if different from the current owner of the debt, a copy of the signed credit application, or the amount of the debt at the time it became delinquent.

[Appendix C.7.a](#) provides a sample victim's letter to a debt collector requesting that the debt collector stop collection proceedings against and cease communications with the victim. The letter also asks the debt collector to notify the creditor that the debt may be fraudulent and provide the victim with information about the debt. [Appendix C.7.b](#) provides a sample letter from an attorney to a debt collector referencing her client's letter, invoking the appropriate legal authority, and requesting resolution or response. To prevent further resale of the debt, your client may wish to file a blocking request and Identity Theft Report under section 605B with each of the CRAs stating that the debt is the result of identity theft. A consumer letter to a CRA concerning section 605B is provided at [Appendix C.1.a](#).

Note on Private Rights of Action: The FDCPA provides a federal private right of action for violation of any of its provisions. Section 813 of the FDCPA sets out the conditions under which a federal civil cause of action may arise, and the damages and penalties that may be available. FDCPA § 813, 15 U.S.C. 1692(k). Be aware that your client may also have private remedies under state law.